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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,293	10/17/2003	Gheorghe C. Cascaval	YOR920030301US1 (16832)	9180
23389	7590	06/28/2005	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			LE, JOHN H	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.D

**Office Action Summary**

Application No.

10/688,293

Applicant(s)

CASCAVAL ET AL.

Examiner

John H. Le

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 15-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-14 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/17/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I (Claims 1-14) in Paper mailed on 05/23/2005 was made **without** traverse is acknowledged. Accordingly, claims 15-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Applicant has the right to file a divisional application covering the subject matter of the non-elected claims 21-37.

### ***Specification***

2. The abstract of the disclosure is objected to because of the form and legal phraseology often used in patent claims, such as "comprises" (line 2) should be avoided.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6, 8-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Calder et al. (US 2004/0111708 A1).

Regarding claims 1, 8, and 12, Calder et al. teach a system for predicting future values of a target metric associated with a task executed on a computer system (e.g.

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[0206]), comprising: a measuring instrument to measure at least one defined metric over a given period of time (e.g. [0057], [0070],[0113]); a metric model for transforming said measurement into a value for a predictor source metric (e.g. predictor is used to capture the measured numbers of metrics, [0070]); and a predictor for using the value for the predictor source metric to obtain a predicted future value for said target metric (e.g. , predictions about future of metrics, [0206]-[0027]).

Regarding claims 2, 9, and 13, Calder et al. teach the predictor includes: a table of values for the target metric; and means for using the value for the predictor source metric as an index to said table to obtain one of the values from said table, wherein said obtained value is used as the predicted future value for the target metric (e.g. [0255]-[0262]).

Regarding claims 3, 10, and 14, Calder et al. teach the measuring instrument includes a counter for obtaining a count of said at least one metric; and the metric model uses said count to help obtain the predictor source metric (e.g. [0057], [0134], [0225]).

Regarding claim 4, Calder et al. teach measuring at least two defined metrics (e.g. [0057]); and the transforming step includes the step of transforming the measurements of said metrics into the value for the predictor source metric (e.g. [0070]).

Regarding claim 5, Calder et al. teach the computer system includes a hardware counter, and the measuring step includes the step of using the hardware counter of the computer system to obtain a count of the at least one metric (e.g. [057], [0134]).

Regarding claim 6, Calder et al. teach providing a set of possible future values (e.g. [0056], [0246]).

***Allowable Subject Matter***

5. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 7, none of the prior art of record teaches or suggests the combination of a method of predicting future values of a target metric associated with a task executed on a computer system, comprising the steps: over a given period of time, measuring at least one defined metric; transforming said measurement into a value for a predictor source metric; and using the value for the predictor source metric to obtain a predicted future value for said target metric; wherein the using step includes the step of providing a set of possible future values; and wherein the step of providing a set of possible future values includes the steps of: identifying values that the target metric had at different times; for each of said identified values of the target metric, determining the value that the source metric had before the time at which the target metric had the identified value; and using said identified values of the target metric as the possible future values. It is these limitations as they are claimed in the combination with other limitations of claim, which have not been found, taught or suggested in the prior art of record, that make these claims allowable over the prior art.

**Contact Information**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John H Le whose telephone number is 571-272-2275. The examiner can normally be reached on 8:00 - 4:30.

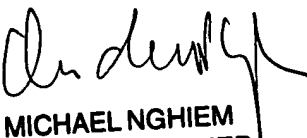
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John H. Le

Patent Examiner-Group 2863

June 24, 2005

  
MICHAEL NGHIEM  
PRIMARY EXAMINER